

Pub. L. 109-14 substituted “\$82,500,000 for the period of October 1, 2004, through June 30, 2005” for “\$73,333,333 for the period of October 1, 2004, through May 31, 2005”.

Subsec. (f). Pub. L. 109-59, §1407(a)(1), redesignated subsec. (e) as (f).

Subsec. (f)(1). Pub. L. 109-59, §1407(b), substituted “2004, and \$110,000,000 for fiscal year 2005” for “2004, and”.

2004—Subsec. (e)(1). Pub. L. 108-310 struck out “and” after “2003,” and inserted “, and \$73,333,333 for the period of October 1, 2004, through May 31, 2005” before period at end.

Pub. L. 108-280 substituted “\$110,000,000 for fiscal year 2004” for “\$100,000,000 for the period of October 1, 2003, through July 31, 2004”.

Pub. L. 108-263 substituted “\$100,000,000 for the period of October 1, 2003, through July 31, 2004” for “\$90,000,000 for the period of October 1, 2003, through June 30, 2004”.

Pub. L. 108-224 substituted “\$90,000,000 for the period of October 1, 2003, through June 30, 2004” for “\$70,000,000 for the period of October 1, 2003, through April 30, 2004”.

Pub. L. 108-202 substituted “\$70,000,000 for the period of October 1, 2003, through April 30, 2004” for “\$50,000,000 for the period of October 1, 2003, through February 29, 2004”.

2003—Subsec. (e)(1). Pub. L. 108-88 struck out “and” after “2002,” and inserted before period at end “, and \$50,000,000 for the period of October 1, 2003, through February 29, 2004”.

**WITHHOLDING OF FUNDS FOR FAILURE TO ENACT AND ENFORCE LAWS RELATING TO DRIVING WHILE INTOXICATED**

Pub. L. 106-346, §101(a) [title III, §351], Oct. 23, 2000, 114 Stat. 1356, 1356A-34, directed the Secretary to withhold a percentage, beginning in fiscal year 2004, of the amount required to be apportioned for Federal-aid highways to any State under pars. (1), (3), and (4) of section 104(b) of this title, if a State had not enacted and was not enforcing a provision described in section 163(a) of this title, and provided for increase of the apportionment by an amount equal to such reduction if within 4 years from the date of the reduction the Secretary determined that such State had enacted and was enforcing a provision described in section 163(a) of this title, prior to repeal by Pub. L. 109-59, title I, §1407(c), Aug. 10, 2005, 119 Stat. 1231.

**§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence**

(a) **DEFINITIONS.**—In this section, the following definitions apply:

(1) **ALCOHOL CONCENTRATION.**—The term “alcohol concentration” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) **DRIVING WHILE INTOXICATED; DRIVING UNDER THE INFLUENCE.**—The terms “driving while intoxicated” and “driving under the influence” mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(3) **LICENSE SUSPENSION.**—The term “license suspension” means the suspension of all driving privileges.

(4) **MOTOR VEHICLE.**—The term “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(5) **REPEAT INTOXICATED DRIVER LAW.**—The term “repeat intoxicated driver law” means a State law that provides, as a minimum pen-

alty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

(A) receive a driver’s license suspension for not less than 1 year;

(B) be subject to the impoundment or immobilization of each of the individual’s motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;

(C) receive an assessment of the individual’s degree of abuse of alcohol and treatment as appropriate; and

(D) receive—

(i) in the case of the second offense—

(I) an assignment of not less than 30 days of community service; or

(II) not less than 5 days of imprisonment; and

(ii) in the case of the third or subsequent offense—

(I) an assignment of not less than 60 days of community service; or

(II) not less than 10 days of imprisonment.

**(b) TRANSFER OF FUNDS.—**

(1) **FISCAL YEARS 2001 AND 2002.**—On October 1, 2000, and October 1, 2001, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402—

(A) to be used for alcohol-impaired driving countermeasures; or

(B) to be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(2) **FISCAL YEAR 2003 AND FISCAL YEARS THEREAFTER.**—On October 1, 2002, and each October 1 thereafter, if a State has not enacted or is not enforcing a repeat intoxicated driver law, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of section 104(b) to the apportionment of the State under section 402 to be used or directed as described in subparagraph (A) or (B) of paragraph (1).

(3) **USE FOR HAZARD ELIMINATION PROGRAM.**—A State may elect to use all or a portion of the funds transferred under paragraph (1) or (2) for activities eligible under section 148.

(4) **FEDERAL SHARE.**—The Federal share of the cost of a project carried out with funds transferred under paragraph (1) or (2), or used under paragraph (3), shall be 100 percent.

(5) **DERIVATION OF AMOUNT TO BE TRANSFERRED.**—The amount to be transferred under paragraph (1) or (2) may be derived from one or more of the following:

(A) The apportionment of the State under section 104(b)(1).

(B) The apportionment of the State under section 104(b)(3).

(C) The apportionment of the State under section 104(b)(4).

(6) TRANSFER OF OBLIGATION AUTHORITY.—

(A) IN GENERAL.—If the Secretary transfers under this subsection any funds to the apportionment of a State under section 402 for a fiscal year, the Secretary shall transfer an amount, determined under subparagraph (B), of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs for carrying out projects under section 402.

(B) AMOUNT.—The amount of obligation authority referred to in subparagraph (A) shall be determined by multiplying—

(i) the amount of funds transferred under subparagraph (A) to the apportionment of the State under section 402 for the fiscal year, by

(ii) the ratio that—

(I) the amount of obligation authority distributed for the fiscal year to the State for Federal-aid highways and highway safety construction programs, bears to

(II) the total of the sums apportioned to the State for Federal-aid highways and highway safety construction programs (excluding sums not subject to any obligation limitation) for the fiscal year.

(7) LIMITATION ON APPLICABILITY OF OBLIGATION LIMITATION.—Notwithstanding any other provision of law, no limitation on the total of obligations for highway safety programs under section 402 shall apply to funds transferred under this subsection to the apportionment of a State under such section.

(Added Pub. L. 105-178, title I, §1406(a), as added Pub. L. 105-206, title IX, §9005(a), July 22, 1998, 112 Stat. 845; amended Pub. L. 109-59, title I, §1401(a)(3)(C), Aug. 10, 2005, 119 Stat. 1225.)

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109-59 substituted “148” for “152”.

EFFECTIVE DATE

Section effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, see section 9016 of Pub. L. 105-206, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

**§ 165. Puerto Rico highway program**

(a) IN GENERAL.—The Secretary shall allocate funds made available to carry out this section for each of fiscal years 2005 through 2009 to the Commonwealth of Puerto Rico to carry out a highway program in the Commonwealth.

(b) APPLICABILITY OF TITLE.—Amounts made available by section 1101(a)(14) of the SAFETEA-LU shall be available for obligation in the same manner as if such funds were apportioned under this chapter.

(c) TREATMENT OF FUNDS.—Amounts made available to carry out this section for a fiscal year shall be administered as follows:

(1) APPORTIONMENT.—For the purpose of imposing any penalty under this title or title 49, the amounts shall be treated as being apportioned to Puerto Rico under sections 104(b) and 144, for each program funded under those sections in an amount determined by multiplying—

(A) the aggregate of the amounts for the fiscal year; by

(B) the ratio that—

(i) the amount of funds apportioned to Puerto Rico for each such program for fiscal year 1997; bears to

(ii) the total amount of funds apportioned to Puerto Rico for all such programs for fiscal year 1997.

(2) PENALTY.—The amounts treated as being apportioned to Puerto Rico under each section referred to in paragraph (1) shall be deemed to be required to be apportioned to Puerto Rico under that section for purposes of the imposition of any penalty under this title or title 49.

(d) EFFECT ON ALLOCATIONS AND APPORTIONMENTS.—Subject to subsection (c)(2), nothing in this section affects any allocation under section 105 and any apportionment under sections 104 and 144.

(Added Pub. L. 109-59, title I, §1120(a), Aug. 10, 2005, 119 Stat. 1191.)

REFERENCES IN TEXT

Section 1101(a)(14) of the SAFETEA-LU, referred to in subsec. (b), is section 1101(a)(14) of Pub. L. 109-59, title I, Aug. 10, 2005, 119 Stat. 1155, which is not classified to the Code.

**§ 166. HOV facilities**

(a) IN GENERAL.—

(1) AUTHORITY OF STATE AGENCIES.—A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

(2) OCCUPANCY REQUIREMENT.—Except as otherwise provided by this section, no fewer than two occupants per vehicle may be required for use of a HOV facility.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Notwithstanding the occupancy requirement of subsection (a)(2), the exceptions in paragraphs (2) through (5) shall apply with respect to a State agency operating a HOV facility.

(2) MOTORCYCLES AND BICYCLES.—

(A) IN GENERAL.—Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

(B) SAFETY EXCEPTION.—

(i) IN GENERAL.—A State agency may restrict use of the HOV facility by motorcycles or bicycles (or both) if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

(ii) ACCEPTANCE OF CERTIFICATION.—The Secretary may accept a certification under